

**BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY**

Meeting Date: August 18, 2004

Division: County Administrator

Bulk Item: Yes ☐ No ☒

Department: County Administrator

AGENDA ITEM WORDING: Approval of a lease with Habitat for Humanity of Key West and the Lower Florida Keys, Inc. for the D & J Industries property on Big Pine Key.

ITEM BACKGROUND: The County is scheduled to close on the purchase of the D & J Industries property on Big Pine Key on August 19, 2004. The proposed lease would allow Habitat for Humanity to use the property for activities related to the provision of affordable housing, including office, warehouse, surplus materials sales, and manufacturing. The lease term is 15 years, the rent payment is nominal (\$10 per year), and as tenant, Habitat for Humanity will be responsible for paying all utilities. Additionally, the lease requires that Habitat for Humanity repair and maintain the property, including repairing the building's spalled concrete and cleaning up the property's contaminated soil.

PREVIOUS RELEVANT BOCC ACTION: On July 14, 2004 the BOCC directed staff to negotiate a lease with Habitat for Humanity and requested Commissioner Neugent to serve as liaison.

CONTRACT/AGREEMENT CHANGES: N/A

STAFF RECOMMENDATIONS: Discussion by the Board and action as deemed appropriate.

TOTAL COST: \$ N/A

BUDGETED: Yes ☐ No ☐

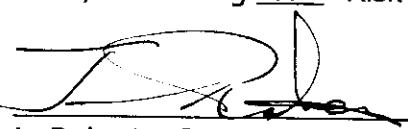
COST TO COUNTY: \$ N/A

SOURCE OF FUNDS:

REVENUE PRODUCING: Yes ☐ No ☐ **AMOUNT PER MONTH** ☐ **YR** ☐

APPROVED BY: County Atty ☒ OMB/Purchasing ☒ Risk Management ☒

DIVISION DIRECTOR APPROVAL:


James L. Roberts, County Administrator

DOCUMENTATION: Included ☒ To Follow ☐ Not Required ☐

DISPOSITION: ☐

AGENDA ITEM # N3

MONROE COUNTY BOARD OF COUNTY COMMISSIONERS

CONTRACT SUMMARY

Contract with: Habitat for Humanity Contract # _____

Effective Date: Aug 18, 2004

Expiration Date: Aug 18, 2019

Contract Purpose/Description: Lease of D+J Industries property

Contract Manager: M. Rosch 5180 5B / Land Authority

(Name) (Ext.) (Department/Stop #)

for BOCC meeting on Aug 18, 2004 Agenda Deadline: Aug 3, 2004

CONTRACT COSTS

Total Dollar Value of Contract: \$ _____ Current Year Portion: \$ _____

Budgeted? Yes ☐ No ☐ Account Codes: _____

Grant: \$ _____

County Match: \$ _____

ADDITIONAL COSTS

Estimated Ongoing Costs: \$ _____ /yr For: _____

(Not included in dollar value above) (eg. maintenance, utilities, janitorial, salaries, etc.)

CONTRACT REVIEW

	Date In	Changes Needed	Reviewer	Date Out
Division Director	<u>8-6-04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>8-6-04</u>
Risk Management	<u>8-4-04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>M. Slane</u>	<u>8-4-04</u>
O.M.B./Purchasing	<u>8/4/04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>8/4/04</u>
County Attorney	<u>8-4-04</u>	Yes <input type="checkbox"/> No <input checked="" type="checkbox"/>	<u>[Signature]</u>	<u>8-4-04</u>

Comments: _____

LEASE

This Lease is made and entered into this ____ day of _____, 2004, by MONROE COUNTY, a political subdivision of the State of Florida, whose address is 1100 Simonton Street, Key West, FL 33040 ("COUNTY"), and the HABITAT FOR HUMANITY OF KEY WEST AND LOWER FLORIDA KEYS, INC, a non-profit corporation of the State of Florida, whose mailing address is P.O. Box 421003, Summerland Key, Florida 33042 (the "LESSEE").

WHEREAS, the COUNTY has determined that the availability of affordable housing for persons in the work force is critically low; and

WHEREAS, LESSEE's mission includes assistance to disadvantaged and low-income people in acquiring affordable home ownership; and

WHEREAS, the COUNTY owns a parcel of land situated on Big Pine Key that includes the premises used hereunder and more particularly described in Exhibit "A;" and

WHEREAS, the parties desire to enter into a lease for the LESSEE's use of the COUNTY's premises as warehouse, office, outlet for sales of surplus donations, and manufacturing facility; and

WHEREAS, the parties recognize that a primary purpose of the COUNTY acquiring the premises was to be able to use the premises for the staging of pre-disaster and post-disaster operations; and

WHEREAS, LESSEE and COUNTY have determined that this lease is in the best interests of the public; now therefore,

The Parties hereto agree as follows:

1. **PROPERTY.** The COUNTY agrees to lease to LESSEE the improved real property shown on Exhibit A, hereafter "the Premises." Exhibit A is attached and made a part of this Lease.

2. **TERM.**

A. Subject to and upon the terms and conditions set forth herein, this Lease shall continue in force for a term of fifteen (15) years commencing as of the __ day of _____, 2004 and ending on the __ day of _____, 2019.

B. Conditioned upon satisfactory compliance with the terms of this lease, LESSEE may, at least sixty (60) days prior to the expiration of this lease, request in writing that COUNTY renew the lease, either under the same terms or modified terms, as the parties may agree.

3. USE AND CONDITIONS.

A. The Premises shall be used solely for the purposes of conducting the LESSEE's activities related to the provision of affordable housing, including warehouse, office, outlet for sales of surplus donations, and manufacturing facility, and uses related directly thereto. No signs of any kind shall be permitted except within the footprint of the Premises. If the Premises are used for any other purpose, the COUNTY shall have the option of immediately terminating this Lease. The LESSEE shall not permit any use of the Premises in any manner that would obstruct or interfere with any COUNTY functions and duties, or would, in any way, devalue, destroy or otherwise injure the COUNTY property.

B. The LESSEE will further use and occupy the Premises in a careful and proper manner, and not commit any waste thereon. The LESSEE shall not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the Premises. Any activities in any way involving hazardous materials or substances of any kind whatsoever, either as those terms may be defined under any state or federal laws or regulations or as those terms are understood in common usage, shall strictly comply with all federal, state and local laws. The LESSEE shall not use or occupy the Premises for any unlawful purpose and will, at the LESSEE's sole cost and expense, conform to and obey any present or future ordinance and/or rules, regulations, requirements and orders of governmental authorities or agencies respecting the use and occupation of the Premises.

C. The LESSEE, through its agents and employees, shall prevent the unauthorized use of the Premises, or any use thereof not in conformance with this Lease. The LESSEE shall not permit the Premises to be used or occupied in any manner that will violate any laws or regulations of any applicable governmental authority or entity.

D. The LESSEE shall be solely responsible for operating and maintaining the premises, including all repairs, renovations, utilities, security, enforcement of rules and regulations, programs, transportation and any and all other aspects of operations.

E. LESSEE shall annually provide COUNTY with Reports on housing construction initiated, housing construction completed, placement of families in completed housing, average use of materials storage space, as well as any statistical reports which are prepared for and circulated to LESSEE'S volunteers and donors.

F. If the premises are used for any other purpose, without the County Administrator's prior written consent, the COUNTY shall have the option of immediately terminating this Agreement. The LESSEE shall not permit any use of the premises, as described in Exhibit "A", in any manner that would obstruct or interfere with any COUNTY functions and duties. Further, the LESSEE shall not sublease any space or antenna use to any other entity.

G. The LESSEE will further use and occupy said premises in a careful and proper manner, and not commit any waste thereon. The LESSEE will not cause, or allow to be caused, any nuisance or objectionable activity of any nature on the premises. The LESSEE will not use or occupy said premises for any unlawful purpose and will, at their sole cost and expense, conform to and obey any present or future ordinance and/or rules, regulations, requirements and orders of governmental authorities or agencies respecting the use and occupation of said premises.

H. The premises and any building existing as of the inception of this lease or constructed thereon by LESSEE shall provide storage and manufacturing space only for HABITAT, and no other entities shall use said premises for any purpose, without prior written consent of the COUNTY.

I. This lease and obligations of LESSEE hereunder are contingent upon LESSEE receiving all permits, approvals and certificates necessary for demolition, renovation new and construction of buildings which are to be permanently located on the demised premises.. The LESSEE shall use the Premises for the purpose of warehousing construction materials, manufacturing or assembling modular homes or parts thereof, an administrative office, related solely to the provision of affordable housing in fulfillment of the LESSEE's corporate mission, and uses incidental thereto. Prior to construction or renovation of any structure or installation of any equipment on the premises, whether in an existing or newly constructed building, the LESSEE shall obtain written approval, signed by the County's Director of Public Works, of the specific construction or installation placement within the Premises. All repairs, renovations, improvements (including new construction), to and maintenance of the Premises shall be at LESSEE's sole expense. The LESSEE acknowledges that the premises contain soil contamination and one or more buildings with a number of defects, including but not limited to concrete spalling. The LESSEE accepts the property in "AS IS" condition, and shall make all de-contamination, repairs or other site improvements necessary to obtain any permits from any regulatory agency. COUNTY shall cooperate with LESSEE in any effort to obtain utility service along said right of way by signing such documents or easements as may be required by utility companies. LESSEE shall perform, at the sole expense of LESSEE, all work required in the preparation of the property or premises hereby leased for occupancy by LESSEE; and LESSEE does hereby accept the leased property or premises as now being in fit and tenantable condition for all purposes of LESSEE.

J. LESSEE shall apply for any and all required building permits necessary for construction, renovations, and other improvements to be permanent and shall provide COUNTY with written notice of the commencement date within ten (10) days preceding the commencement of construction by LESSEE and which written notice shall become a part of this AGREEMENT.

K. No structure or improvements of any kind, whether temporary or permanent, shall be placed upon the land without prior approval in writing by the COUNTY Administrator, which shall not be unreasonably withheld, a building permit and any permits required by law by any other agency, federal or state. Any such structure or improvements shall be constructed in a good and workmanlike manner at the LESSEE's sole cost and expense, except as otherwise agreed herein. Subject to any landlord's lien, any structures or improvements constructed by the LESSEE shall be removed by the LESSEE at its sole cost and expense, by midnight on the day of termination of this Lease or extension hereof, and the land restored as nearly as practical to its condition at the time this lease is executed, unless the Board of County Commissioners accepts, at the time delivery is tendered, in writing delivery of the Premises together with any structures or improvements constructed by the LESSEE. The LESSEE shall be solely responsible for obtaining all necessary permits and paying impact fees required by any agency and any connection fees required by any utility.

L. The LESSEE shall perform, at its sole expense, all work required in the preparation of the property or Premises hereby used for occupancy by the LESSEE except as otherwise provided in this lease.

M. COUNTY reserves the right to inspect the area and to require whatever adjustment to structures or improvements as COUNTY, in its sole discretion, deems necessary. Any adjustments shall be done at the LESSEE's sole cost and expense.

N. Signage of any type shall comply with the County's sign regulations.

O. At any time that the Premises are needed by COUNTY for pre-disaster and/or post-disaster staging operations, LESSEE shall accommodate COUNTY to the fullest degree possible. This shall include, when necessary, but not be limited to, cessation of Single Family Residential manufacturing and components assembly activity, consolidation of stored construction materials as fully as possible to accommodate storage of materials by COUNTY, and the like.

4. **RENT.** For the use of the Premises, the LESSEE must pay the COUNTY the sum of ten dollars (\$10.00) per year, due on the first day of the contract year, payable in advance and remitted to Monroe County Clerk's Office, 500 Whitehead Street, Key West, FL 33040.

5. UTILITIES.

LESSEE shall be responsible for paying any and all costs of utility connection fees, impact fees, effluent discharge units, or any other costs associated with the placement of utility infrastructure to provide utility services to the premises, and all monthly utility fees, such as water, electric, sewer, telephone or cable television.

6. MECHANIC'S LIENS. The LESSEE shall not permit any mechanic's lien or liens to be placed on the Premises or on improvements on it. If a mechanic's lien is filed, it shall be the sole responsibility of the LESSEE or its officer, employee, agent, contractor or other representative causing the lien to be filed to discharge the lien and to hold harmless and defend Department of Juvenile Justice, Monroe County Sheriff's Office, and Monroe County against enforcement of such lien. Pursuant to Section 713.01, F.S. the liens authorized in ch. 713, F.S. do not apply to the COUNTY.

7. RECORDS - ACCESS AND AUDITS. The LESSEE shall maintain adequate and complete records for a period of four years after termination of this Lease. The COUNTY, its officers, employees, agents and contractors shall have access to the LESSEE's books, records, and documents related to this Lease upon request. The access to and inspection of such books, records, and documents by the COUNTY shall occur at any reasonable time.

8. RELATIONSHIP OF PARTIES. The LESSEE is, and shall be an independent contractor and not an agent or servant of the COUNTY. The LESSEE shall exercise control, direction, and supervision over the means and manner that its personnel, contractors and volunteers perform the work for which purpose this Lease is entered. The LESSEE shall have no authority whatsoever to act on behalf and/or as agent for the COUNTY in any promise, lease or representation other than specifically provided for in this Lease. The COUNTY shall at no time be legally responsible for any negligence on the part of the LESSEE, its employees, agents or volunteers resulting in either bodily or personal injury or property damage to any individual, property or corporation.

9. TAXES. The LESSEE must pay all taxes and assessments, if any, including any sales or use tax, levied by any government agency with respect to the LESSEE's operations on the Premises.

10. INSURANCE.

A. To the extent allowed by law, each party shall be responsible for any acts of negligence on the part of its employees, agents, contractors, and subcontractors and shall defend, indemnify and hold the other party harmless from all claims arising out of such actions.

B. LESSEE shall, throughout the term of this lease, maintain insurance in a minimum amount of One Million Dollars (\$1,000,000.00) for bodily injury or death to any One person or number of persons in any one occurrence and not less than One Million Dollars (\$1,000,000.00) for property damage unless waived or modified by County Risk Management per Administrative Instruction 4709. The insurance policy (or policies) shall name Monroe County as an additional insured.

C. If the insurance policies originally purchased which meet the requirements of this lease are canceled, terminated or reduced in coverage, then the LESSEE must immediately substitute complying policies so that no gap in coverage occurs. Copies of current policy certificates shall be filed with the COUNTY whenever acquired or amended.

11. **CONDITION OF PREMISES.** The LESSEE must keep the Premises in good order and condition. The LESSEE must promptly repair damage to the Premises. At the end of the term of this Lease, the LESSEE must surrender the Premises to the COUNTY in the same good order and condition as the Premises were on the commencement of the term, normal wear and tear excepted. The LESSEE is solely responsible for any improvements to land and appurtenances placed on the Premises. The LESSEE shall not commit waste on the Premises, nor maintain or permit a nuisance on the Premises. After termination or expiration of this Lease, the LESSEE shall pay the COUNTY the cost of any repairs and clean-up necessary to restore the Premises to its condition at the commencement of the Lease.

12. **HOLD HARMLESS.** To the extent allowed by law, the LESSEE is liable for and must fully defend, release, discharge, indemnify and hold harmless the COUNTY, the members of the County Commission, COUNTY officers and employees, COUNTY agents and contractors, and the Sheriff's Office, its officers and employees, from and against any and all claims, demands, causes of action, losses, costs and expenses of whatever type - including investigation and witness costs and expenses and attorneys' fees and costs - that arise out of or are attributable to the LESSEE's operations on the Premises except for those claims, demands, damages, liabilities, actions, causes of action, losses, costs and expenses that are the result of the sole negligence of the COUNTY. The LESSEE's purchase of the insurance required under this Lease does not release or vitiate its obligations under this paragraph. The COUNTY does not waive any of its sovereign immunity rights including but not limited to those expressed in Section 768.28, Florida Statutes.

13. NON-DISCRIMINATION. County and Contractor agree that there will be no discrimination against any person, and it is expressly understood that upon a determination by a court of competent jurisdiction that discrimination has occurred, this Agreement automatically terminates without any further action on the part of any party, effective the date of the court order. County or Contractor agree to comply with all Federal and Florida statutes, and all local ordinances, as applicable, relating to nondiscrimination. These include but are not limited to: 1) Title VI of the Civil Rights Act of 1964 (PL 88-352) which prohibits discrimination on the basis of race, color or national origin; 2) Title IX of the Education Amendment of 1972, as amended (20 USC ss. 1681-1683, and 1685-1686), which prohibits discrimination on the basis of sex; 3) Section 504 of the Rehabilitation Act of 1973, as amended (20 USC s. 794), which prohibits discrimination on the basis of handicaps; 4) The Age Discrimination Act of 1975, as amended (42 USC ss. 6101- 6107) which prohibits discrimination on the basis of age; 5) The Drug Abuse Office and Treatment Act of 1972 (PL 92-255), as amended, relating to nondiscrimination on the basis of drug abuse; 6) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (PL 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism; 7) The Public Health Service Act of 1912, ss. 523 and 527 (42 USC ss. 690dd-3 and 290ee-3), as amended, relating to confidentiality of alcohol and drug abuse patient records; 8) Title VIII of the Civil Rights Act of 1968 (42 USC s. et seq.), as amended, relating to nondiscrimination in the sale, rental or financing of housing; 9) The Americans with Disabilities Act of 1990 (42 USC s. 1201 Note), as maybe amended from time to time, relating to nondiscrimination on the basis of disability; 10) Monroe County Code Ch. 13, Art. VI, prohibiting discrimination on the bases of race, color, sex, religion, disability, national origin, ancestry, sexual orientation, gender identity or expression, familial status or age; and 11) any other nondiscrimination provisions in any Federal or state statutes which may apply to the parties to, or the subject matter of, this Agreement.

14. TERMINATION. The COUNTY may treat the LESSEE in default and terminate this Lease immediately, without prior notice, upon failure of the LESSEE to comply with any provision related to compliance with all laws, rules and regulations. This Lease may be terminated by COUNTY due to breaches of other provisions of this Lease if, after written notice of the breach is delivered to the LESSEE, the LESSEE does not cure the breach within 7 days following delivery of notice of breach. The COUNTY may terminate this Lease upon giving one hundred twenty (120) days prior written notice to the LESSEE. Any waiver of any breach of covenants herein contained shall not be deemed to be a continuing waiver and shall not operate to bar either party from declaring a forfeiture for any succeeding breach either of the same conditions or covenants or otherwise.

15. CESSATION OF HABITAT AFFORDABLE HOUSING OPERATIONS. Upon the natural expiration or early termination of this lease, the operation of a manufacturing facility, administrative office and storage warehousing shall immediately be ceased and all improvements, equipment, and other personalty of the LESSEE, its officers, employees, contractors, agents,

volunteers and invitees shall immediately be removed from the Premises. Any damage to the Premises which has occurred due to the use contemplated under this Lease shall be immediately repaired and the Premises restored to its original condition, unless the Parties agree at time of cessation of operations that the premises need not be repaired or restored due to other benefits installed by LESSEE during term of lease. Should the LESSEE determine to cease operation prior to the natural termination of this lease, the LESSEE shall give COUNTY prior written notice of such intended cessation sixty (60) days before the effective date of the cessation of operation.

16. **ASSIGNMENT.** The LESSEE may not assign this Lease or assign or subcontract any of its obligations under this Lease without the approval of the COUNTY's Board of County Commissioners. All the obligations of this Lease will extend to and bind the legal representatives, successors and assigns of the LESSEE and the COUNTY.

17. **SUBORDINATION.** This Lease is subordinate to the laws and regulations of the United States, the State of Florida, and the COUNTY, whether in effect on commencement of this Lease or adopted after that date.

18. **INCONSISTENCY.** If any item, condition or obligation of this Lease is in conflict with other items in this Lease, the inconsistencies shall be construed so as to give meaning to those terms which limit the County's responsibility and liability.

19. **GOVERNING LAWS/VENUE.** This Lease is governed by the laws of the State of Florida and the United States. Venue for any dispute arising under this Lease must be in Monroe County, Florida. In the event of any litigation, the prevailing party is entitled to a reasonable attorney's fee and costs.

20. **ETHICS CLAUSE.** The LESSEE warrants that it has not employed, retained or otherwise had act on its behalf any former County officer or employee subject to the prohibition of Section 2 of ordinance No. 010-1990 or any County officer or employee in violation of Section 3 of Ordinance No. 010-1990. For breach or violation of this provision, the COUNTY may, in its discretion, terminate this Lease without liability and may also, in its discretion, deduct from the Lease or purchase price, or otherwise recover, the full amount of any fee, commission, percentage, gift or consideration paid to the former County officer or employee.

21. **CONSTRUCTION.** This Lease has been carefully reviewed by the LESSEE and the COUNTY. Therefore, this Lease is not to be construed against any party on the basis of authorship.

22. **NOTICES.** Notices in this Lease, unless otherwise specified, must be sent by certified mail to the following:

COUNTY:
County Administrator
1100 Simonton Street
Key West, FL 33040

LESSEE
Habitat Executive Director
P.O. Box 421003
Summerland Key , FL 33042

23. **FULL UNDERSTANDING.** This Lease is the parties' final mutual understanding. It replaces any earlier leases or understandings, whether written or oral. This Lease cannot be modified or replaced except by another written and signed lease.

IN WITNESS WHEREOF, each party has caused this Lease to be executed by its duly authorized representative.

(SEAL)
ATTEST:
DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Mayor/Chairman

(SEAL)
ATTEST:

By:  _____

HABITAT FOR HUMANITY OF KEY WEST
AND THE LOWER FLORIDA KEYS, INC.

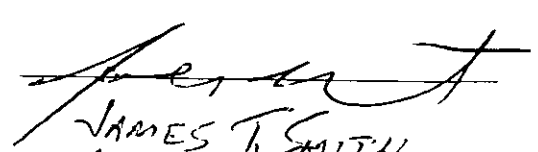
By:  _____
JAMES T. SMITH
PRESIDENT

EXHIBIT "A" TO LEASE

Parcel 1

TRACT no. 3, as per unrecorded sketch of Tropic-Island Ranchetts, Big Pine Key, Florida and now particularly described by metes and bounds as follows:

On the island of Big Pine Key, Monroe County, Florida, begin at the center of Section 26, Township 66 South, Range 29 East; thence run due Westerly 548.75 feet to the POINT OF BEGINNING; thence continue due Westerly 299.375 feet; thence run due Southerly 160.0 feet; thence run due Easterly 299.375 feet; thence run due Northerly 160.0 feet to the POINT OF BEGINNING.

Parcel II

Easement for the purpose of vehicular and pedestrian ingress and egress as reserved in Special Warranty Deed from Carnival Fruit Company, a Florida corporation, to Bruce H. Seigal and Leda Grodsky Seigal, his wife, dated August 27, 1990, recorded August 27, 1990 in Official Records Book 1142, at Page 1544, of the Public Records of Monroe County, Florida.

COUNTY:
County Administrator
1100 Simonton Street
Key West, FL 33040

LESSEE
Habitat Executive Director
P.O. Box 421003
SummerlandKey , FL 33042

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(SEAL)
ATTEST:
DANNY L. KOLHAGE, CLERK

BOARD OF COUNTY COMMISSIONERS
OF MONROE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Mayor/Chairman

(SEAL)
ATTEST:

HABITAT FOR HUMANITY OF KEY WEST
AND THE LOWER FLORIDA KEYS, INC.

By: _____

By: _____

MONROE COUNTY ATTORNEY
APPROVED AS TO FORM


SUZANNE A. HUTTON

MONROE COUNTY ATTORNEY
8/3/04